

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
NEW BERN DIVISION**

IN RE: Moates, Kevin Grey.

CASE NO.: 06-02903-8-JRL

Chapter 7

Debtor(s)

**JOHN C. BIRCHER III, Trustee in Bankruptcy,
Estate of Kevin G. Moates,**

Plaintiff,

v.

Adversary Proceeding No.:

**AYNNE PRICE MORISON and
WILMA J. PRICE,**

Defendants.

**COMPLAINT TO SELL REAL ESTATE
FREE AND CLEAR OF DEFENDANTS' INTEREST**
11 USC § 363(h)

NOW COMES John C. Bircher III, Chapter 7 Trustee for Kevin J. Moates (Trustee), and hereby alleges and states the following:

1. That the Plaintiff is the duly-appointed Chapter 7 Trustee, and was appointed on September 15, 2007 in the above-captioned Chapter 7 case. The Debtor filed her petition on September 18, 2007.
2. Upon information and belief, the Defendant Aynne Price Morison is a citizen and resident of Keyser, West Virginia and is the sister-in-law of Kevin J. Moates.
3. Upon information and belief, the Defendant Wilma J. Price is a citizen and resident of Keyser, West Virginia, and is the former mother-in-law of Kevin J. Moates.
4. That this Court has jurisdiction over this matter pursuant to 28 USC § 1334, and that the requests for relief establish that this matter is a core proceeding under 28 USC § 157.

5. That venue is proper pursuant to 28 USC §§ 1408 and 1409.

FACTUAL ALLEGATIONS

6. That the Debtor Kevin J. Moates was married to Beatrice Price Moates, and as of the date of the petition filing, were not divorced.
7. That Beatrice was the sole owner of a tract of land in Polk County, North Carolina, more specifically identified on the attached Exhibit A.
8. That Beatrice Moates and the Debtor separated, and subsequent to their separation, Beatrice Moates died intestate before the order for relief was entered in the bankruptcy case.
9. That there were no children of the marriage, and because Beatrice Moates died without a will, her assets are distributed according to the guidelines regarding Intestate Succession in Chapter 29 of the North Carolina General Statutes.
10. That according to N.C. Gen. Stat. § 29-14(a)(3), if the intestate is not survived by a child, children or any lineal descendant of a deceased child or children, but is survived by one or more parents, a one-half undivided interest in the real property is vested in the surviving spouse.
11. That as of the filing of the complaint, the undersigned believes that Wilma J. Price, mother of the deceased Beatrice J. Moates is alive, however, the Trustee, after diligent search, has been unable to locate Wilma J. Price.
12. Since the Trustee is informed that the deceased's sister, Aynne Price Morison is living in West Virginia, and upon further information, believes that Wilma J. Price has been living near or with Aynne recently.
13. That the Trustee is unaware of Wilma J. Price is still living, and upon information and belief, Aynne Morison is the sole living heir of Wilma J. Price.

CAUSE OF ACTION **11 USC §363(h)**

14. That the allegations contained in paragraphs one (1) through thirteen (13) are realleged and incorporated herein as if fully set forth.
15. That a partition of the property among the estate and the Defendants would be impracticable, as the subject property is residential property with no significant land area.

16. That a sale of the estate's undivided interest in the subject property would realize significantly less for the estate than would a sale of the subject property free and clear of the Defendants' interests.
17. That pursuant to 11 USC 363(h), this court has the power to order the sale of the above-described property free and clear of the interests of Wilma J. Price or Aynne Morison as an heir to the estate of Wilma J. Price.
18. The benefit to the estate of a sale of the subject property free and clear of the Defendants' interests outweighs the detriment, if any, to the Defendants.
19. That, upon information and belief, the property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light or power.
20. Accordingly, the Trustee is entitled to approval by the Court to sell the subject property free and clear of any interests of the Defendant in the subject property.

WHEREFORE, Trustee requests the following relief:

1. That the Court find that the Trustee is authorized to administer the subject property free of any interest held by Defendants;
2. That the Court approve Trustee's request to sell the subject property free and clear of the interest of Defendants;
3. That the costs of this action be taxed against the Defendants;
4. For such other and further relief this Court deems just and proper.

THIS the 11th day of September, 2007

/s/ John C. Bircher III
John C. Bircher III
WHITE & ALLEN, PA
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Post Office 1555
New Bern, NC 28560
N.C. State Bar No.: 24119
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WARRANTY DEED Form WD 601

Printed and for sale by James Williams & Co., Inc., Yorkville, N.C.

STATE OF NORTH CAROLINA, POLK County.
 THIS DEED, Made this 19 day of May, 1995, by and between Zeb Price, Jr. and wife, Wilma B. Price of Greenville County and state of North Carolina, hereinafter called Grantor, and Beatrice J. Moates of Polk County and state of North Carolina, hereinafter called Grantee, whose permanent mailing address is 1188 Hwy 9N, Mill Springs, N. C. 28756

WITNESSETH: That the Grantor, for and in consideration of the sum of TEN AND NO/100 Dollars and other good and valuable considerations to him in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has given, granted, bargained, sold and conveyed, and by these presents does give, grant, bargain, sell, convey and confirm unto the Grantee, his heirs and/or successors and assigns, premises in Coopers Gap Township, Polk County, North Carolina, described as follows:

Lying and being in Coopers Gap Township, Polk County, N. C. and being a part of the Z. M. Price 24 1/8 acre tract as shown and set forth in Deed Book at Page of the Polk County Registry to which reference is hereby made. BEGINNING on an iron pin located on the West bank of the Mills Spring-Lake Lure Highway and being also a corner of the 10.26/100 acre tract and running thence with line of 10.26/100 acre tract, S. 83-15 W. 460 feet to an iron stake, corner of the 3.64/100 acre tract; thence with line of 3.64/100 acre tract, S. 25 E. 400 feet to an iron stake; thence N. 77-30 E. 183 feet to an iron stake in the Harris line; thence with Harris line, N. 12 W. 185 feet to an iron stake; thence N. 76-30 E. 190 feet to an iron pin located on the West bank of Mills Spring-Lake Lure Highway; thence with said Highway, N. 10-45 W. 150 feet to an iron pin, the BEGINNING corner and containing 2.68/100 acres more or less.

Reference is also made to a certain plat made the 15th day of October, 1960, by Fred A. Wilkie, Surveyor. See Book 119 at page 76 of the Polk County Registry.

NO TITLE OPINION RENDERED.

MOATESB.V5

The above land was conveyed to Grantor by See Book No. 119, Page 76
 TO HAVE AND TO HOLD The above described premises, with all the appurtenances thereto belonging, or in any wise appertaining, unto the Grantee, his heirs and/or successors and assigns forever.
 And the Grantor covenants that he is seised of said premises in fee, and has the right to convey the same in fee simple; that said premises are free from encumbrances (with the exceptions above stated, if any); and that he will warrant and defend the said title to the same against the lawful claims of all persons whomsoever.
 When reference is made to the Grantor or Grantee, the singular shall include the plural and the masculine shall include the feminine or the neuter.
 IN WITNESS WHEREOF, The Grantor has hereunto set his hand and seal, the day and year first above written.
 Zeb Price Jr. (SEAL) Wilma B. Price (SEAL)

STATE OF NORTH CAROLINA, Polk County.
 I, Nellie Carlton Jackson, a Notary Public of said County, do hereby certify that
 Zeb Price Jr. and wife, Wilma B. Price
 Grantor, personally appeared before me this day and acknowledged the execution of the foregoing deed.
 Witness my hand and notarial seal, this the 23rd day of May, 1995.
 My Commission Expires: Nov. 06-1996

STATE OF NORTH CAROLINA, Polk County.
 I, a Notary Public of said County, do hereby certify that
 Grantor, personally appeared before me this day and acknowledged the execution of the foregoing deed.
 Witness my hand and notarial seal, this the day of 1995.
 My Commission Expires: N. P. (SEAL)

STATE OF NORTH CAROLINA, Polk County.
 The foregoing certificate(s) of Nellie Carlton Jackson
 is (are) certified to be correct. This instrument was presented for registration this 24 day of May, 1995.
 at 12:35 A. M. (P. M.), and duly recorded in the office of the Register of Deeds of Polk County,
 North Carolina, in Book 228, Page 1891
 This the 24 day of May, A. D. 1995.
 Register of Deeds By Assistant, Deputy Register of Deeds

This Deed drawn by

EXHIBIT

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